Case: 10-15152 08/31/2012 ID: 8307669 DktEntry: 95-1 Page: 1 of 7 (1 of 29)

Case No. 10-15152

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before the En Banc Panel (Opinion filed February 23, 2012)

ELIZABETH AIDA HASKELL, REGINALD ENTO, JEFFREY PATRICK LYONS, JR., and AAKASH DESAI, on behalf of themselves and others similarly situated,

Plaintiffs-Appellants,

V.

KAMALA D. HARRIS, Attorney General of California; EVA STEINBERGER, Assistant Bureau Chief for DNA Programs, California Department of Justice,

Defendants-Appellees.

PLAINTIFFS-APPELLANTS' MOTION FOR JUDICIAL NOTICE

On Appeal from the United States District Court for the Northern District of California
The Honorable Charles R. Breyer
Case No. C 09-04779 CRB

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ELIZABETH AIDA HASKELL, REGINALD ENTO, JEFFREY PATRICK LYONS, JR., and AAKASH DESAI, on behalf of themselves and others similarly situated

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MOTION FOR JUDICIAL NOTICE

Pursuant to Federal Rule of Evidence 201, Plaintiffs-Appellants Elizabeth Aida Haskell, Reginald Ento, Jeffrey Patrick Lyons, Jr., and Aakash Desai (collectively, "Plaintiffs-Appellants"), on behalf of themselves and others similarly situated, hereby request that the Court take judicial notice of the following in further support of the Supplemental Brief of Appellants:

- The data contained in Exhibit 1 to the Declaration of Michael Risher in Support of Plaintiffs-Appellants' Motion for Judicial Notice ("Risher Declaration"), which comprises true and correct copies of the Jan Bashinski DNA Laboratory Monthly Statistics Reports from January 2010 through July 2012, as provided by the California Department of Justice on behalf of Defendant-Appellee Harris.
- 2. The yearly averages of the number of profiles added to California's DNA databank per month, the number of forensic unknown profiles in that system, and the average number of hits per month, for the years 2010, 2011, and 2012 to date, as contained in Exhibit 3 to the Risher Declaration, and as calculated from the data contained in Exhibit 1.

Under Federal Rule of Evidence 201(d), judicial notice may be taken at any stage of the proceeding, including by an appellate court during the pendency of an appeal. Fed. R. Evid. 201(d); *see also Lowry v. Barnhart*, 329 F.3d 1019, 1024

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(9th Cir. 2003); *Bryant v. Carleson*, 444 F.2d 353, 357-58 (9th Cir. 1971); Circuit Advisory Committee Note Seven to Ninth Circuit Rule 27-1. The Court may take judicial notice of any matter "not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

The monthly reports included in Exhibit 1 are the proper subject of judicial notice. A court may take judicial notice of figures contained in official documents, including documents appearing on a government website. See, e.g., Daniels-Hall v. Nat'l Educ. Ass'n, 629 F.3d 992, 998-99 (9th Cir. 2010) (judicial notice of information displayed on school district website); Sinaloa Lake Owners Ass'n v. City of Simi Valley, 864 F.2d 1475, 1479-80 & n.2 (9th Cir. 1989) ("We take judicial notice of these figures, contained in the reports of a public body, pursuant to Fed. R. Evid. 201(b)(2)."). The monthly reports included in Exhibit 1 are official reports of the California Department of Justice, Office of the Attorney General. See Cal. Penal Code § 295(h)(4). They are authenticated because they were obtained directly from that office or its website. See Declaration of Michael Risher ISO Mot. for Judicial Notice ("Risher Decl."), ¶¶ 2-6 & Ex. 2, filed concurrently; Cota v. Maxwell-Jolly, 688 F. Supp. 2d 980, 998 (N.D. Cal. 2010) ("The Court may properly take judicial notice of the documents appearing on a

governmental website."). These data are relevant because they support Appellants' position that it is the size of the forensic-unknown database, rather than the increase in the number of known samples taken from arrestees, that has been responsible for the increasing number of hits in California's DNA database (specifically, that the number of hits has increased with the number of forensic unknown samples in the database, even as the number of new samples taken from arrestees has dropped precipitously). And the Defendants-Appellees can hardly object to this Court's taking notice of the data that they themselves published on their website and rely upon. *See Cota*, 688 F. Supp. 2d at 998. Thus, the Court should "take judicial notice of these figures, contained in the reports of a public body[.]" *Sinaloa Lake Owners Ass'n*, 864 F.2d at 1479-80 & n.2.

The Court should also take judicial notice of the 2010, 2011, and 2012 averages of the monthly number of new profiles uploaded into the databank, the number of forensic unknown samples in the database, and the monthly number of hits (as well as the percentage changes). *See* Risher Decl. ¶¶ 9-14 & Ex. 3. Courts properly take judicial notice of the results of simple mathematical calculations, because they are easily verified. *See Miller v. Fed. Land Bank of Spokane*, 587 F.2d 415, 422 (9th Cir. 1978) ("This is a matter of mathematics, of which the court could and should have taken judicial notice."); *see, e.g., United States v. Sowards*, -- F.3d --, 2012 WL 2386605, *4 (4th Cir. June 26, 2012) (taking judicial notice of

mathematical formula for average speed and reversing trial court finding that contradicted what that average demonstrated); Drake v. Holstead, 757 S.W.2d 909, 911 (Tex. App. 1988) (discussing Fed. R. Evid. 201 and holding that trial court erred in failing to take judicial notice of counsel's "simple mathematical computation"); Warboys v. Proulx, 303 F. Supp. 2d 111, 116-17 (D. Conn. 2004); Wright & Miller, 21B Fed. Prac. & Proc. Evid. § 5105, "Combinatorial Common Knowledge" (2d ed.). Taking an average of a set of figures is a simple calculation, much simpler that the calculations that courts routinely use in determining attorneys' fees, sentences under the federal guidelines, and damages. See, e.g., Leeward Capital, L.P. v. Archon Corp., 759 F. Supp. 2d 1249, 1255-58 (D. Nev. 2010). And the results of such a calculation are not subject to dispute. Thus, because the Court may judicially notice the government's data, it may also judicially notice the yearly averages of those data, as they "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

Finally, these averages are relevant because they, even more than the individual monthly figures, make it clear that the government is wrong when it claims that the increase in database hits is a result of the addition of more and more arrestee samples. Far from showing that more testing of known persons (arrestees and convicted offenders) leads to more hits, these averages show an *inverse*

dropped by nearly one half (from 20,931 in 2010, to 15,749 in 2011, and to 11,915 in 2012 to date), the average number of hits increased from 361 to 377 to 397, respectively. Again, this increase in hits accompanied an increase in the number of samples in the forensic-unknown (crime-scene) database, which increased from 35,145 to 46,212 over this same period.

Plaintiffs-Appellants therefore request that the Court take judicial notice of the data set forth in the monthly reports contained with Exhibit 1 to the Risher Declaration, as well as the yearly averages of that data for 2010, 2011, and 2012 to date contained within Exhibit 3 to the Risher Declaration.

Respectfully submitted,

Dated: August 31, 2012 PAUL HASTINGS LLP

By: /s/ Eric A. Long
Eric A. Long

Dated: August 31, 2012 AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, INC.

By: /s/ Michael T. Risher

Michael T. Risher

Attorneys for Plaintiffs-Appellants Elizabeth Aida Haskell, Reginald Ento, Jeffrey Patrick Lyons, Jr., and Aakash Desai, on behalf of themselves and others similarly situated Case: 10-15152 08/31/2012 ID: 8307669 DktEntry: 95-1 Page: 7 of 7 (7 of 29)

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 31, 2012.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Nanette Cosentino	
NANETTE COSENTINO	

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Case No. 10-15152

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before the En Banc Panel (Opinion filed February 23, 2012)

ELIZABETH AIDA HASKELL, REGINALD ENTO, JEFFREY PATRICK LYONS, JR., and AAKASH DESAI, on behalf of themselves and others similarly situated,

Plaintiffs-Appellants,

V.

KAMALA D. HARRIS, Attorney General of California; EVA STEINBERGER, Assistant Bureau Chief for DNA Programs, California Department of Justice,

Defendants-Appellees.

DECLARATION OF MICHAEL RISHER IN SUPPORT OF PLAINTIFFS-APPELLANTS' MOTION FOR JUDICIAL NOTICE

On Appeal from the United States District Court for the Northern District of California
The Honorable Charles R. Breyer
Case No. C 09-04779 CRB

Peter C. Meier Eric A. Long Jamie L. Williams PAUL HASTINGS LLP 55 Second Street Twenty-Fourth Floor San Francisco, CA 94105 Telephone: (415) 856-7000 Facsimile: (415) 856-7100 Michael T. Risher AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, INC. 39 Drumm Street San Francisco, CA 94111 Telephone: (415) 621-2493 Facsimile: (415) 255-8437

Attorneys for Plaintiffs-Appellants

ELIZABETH AIDA HASKELL, REGINALD ENTO, JEFFREY PATRICK LYONS, JR., and AAKASH DESAI, on behalf of themselves and others similarly situated

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DECLARATION OF MICHAEL RISHER

- I, Michael T. Risher, declare and state as follows:
- 1. I am an attorney at law admitted to practice before this Court. I am a staff attorney at the American Civil Liberties Union Foundation of Northern California, Inc. ("ACLU-NC"), counsel of record, along with Paul Hastings LLP, for Plaintiffs-Appellants Elizabeth Aida Haskell, Reginald Ento, Jeffrey Patrick Lyons, Jr., and Aakash Desai ("Plaintiffs-Appellants"), on behalf of themselves and others similarly situated. This declaration is submitted in support of Plaintiffs-Appellant's Motion for Judicial Notice. I have personal knowledge of the matters set forth below and, if called upon, could and would competently testify thereto.
- 2. The California Department of Justice, Office of the Attorney General's website features a webpage entitled "Proposition 69 (DNA)," currently located at http://oag.ca.gov/bfs/prop69. This webpage includes a link to the Jan Bashinski DNA Laboratory Monthly Statistics. The monthly statistics link, currently http://oag.ca.gov/sites/all/files/pdfs/bfs/Monthly.pdf?, is updated each month to report the statistics for the prior month. The statistics for previous months are taken down from the Office of the Attorney General's Proposition 69 (DNA) webpage.
- 3. On April 6, 2012, I requested copies of these reports from California's Jan Bashinski DNA laboratory "for each month from January 2007 to

the present." In response, I received the requested reports in electronic form, from the California Department of Justice. The reports in Exhibit 1 dated from January 2010 through March 2012 are true and accurate copies of reports I received from the Department of Justice. A copy of the cover letter that accompanied them is attached as Exhibit 2.

- 4. I visited the Office of the Attorney General's Proposition 69 (DNA) webpage every month from May 2012 through August 2012, with the exception of June 2012, and downloaded the Jan Bashinski DNA Laboratory Monthly Statistics for the months immediately prior, downloading the monthly statistics for April 2012 through July 2012, with the exception of May 2012. The reports in Exhibit 1 dated April, June, and July 2012 are true and accurate copies of the reports I downloaded from this site.
- 5. I did not download the Jan Bashinski DNA Laboratory Monthly Statistics for the month of May 2012 from the Office of the Attorney General's Proposition 69 (DNA) webpage. I did, however, find the May 2012 Jan Bashinski DNA Laboratory Monthly Statistics available online at another website maintained by the California Attorney General's office, at http://oag.ca.gov/sites/all/files/pdfs/bfs/Monthly_june.pdf (last visited Aug. 30, 2012). The report in Exhibit 1 dated May 2012 is a true and accurate copy of the report I downloaded from this webpage.

- 6. Thus, each of the reports in Exhibit 1 is a true and accurate copy of a report published by, or provided to me by, the Office of the Attorney General of California.
- 7. These data show, for example, that in January 2010, the State uploaded 21,285 new samples into its database and obtained 255 hits; the total number of crime-scene samples in the database that month was 29,885.
- 8. The most recent report shows that in July 2012 the State uploaded 15,559 (roughly 1/3 less than in January 2010) new samples into its database and obtained 403 hits (approximately 58% more than in January 2010); the total number of crime-scene samples in the database that month was 48,132 (approximately 61% more than in 2010).
- 9. Attached as Exhibit 3 is a spreadsheet that shows the data from the reports contained in Exhibit 1. I have reviewed the spreadsheet contained within Exhibit 3 to ensure that it accurately reflects the data in the monthly reports published by, or provided to me by, the Office of the Attorney General of California.
- 10. The final column of the spreadsheet for each year shows the yearly average of the indicated category of data. I used Microsoft Excel to calculate these averages and confirmed them using a calculator, dividing the sum of the data by the number of data entries (12 for 2010 and 2011; 7 for 2012).

11. These basic calculations revealed the following:

- In 2010, the State uploaded an average of 20,931 new samples each month; it obtained an average 361 hits per month, and the average number of forensic-unknown samples in the database was 32,966.
- In 2011, the State uploaded an average of 15,749 new samples each month; it obtained an average 377 hits per month, and the average number of forensic-unknown samples in the database was 40,825.
- In 2012 through July, the State uploaded an average of 11,915 new samples each month; it obtained an average 397 hits per month, and the average number of forensic-unknown samples in the database was 46,212.

I declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct. Signed this 31st day of August, 2012, at San Francisco, California.

/s/ Michael T. Risher
Michael T. Risher

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 31, 2012.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

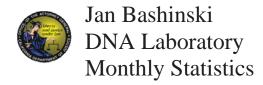
/s/ Nanette Cosentino	
NANETTE COSENTINO	

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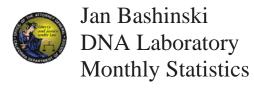
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EXHIBIT 1

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Month	January 2010 (as of January 31, 2010)
Starting Backlog	48,553
New Samples Added	19,839
Profiles Uploaded into CODIS	21,285
Newly Removed from Backlog (Overall Total of <u>25.829</u> removed from backlog—including any samples Expunged, Removed of Falledle wice, as well as where a New Sample has been requested)	391
Ending Backlog	46,716
Total Forensic Unknown Profiles in CODIS	29,885
Total Data Bank (Offender) Profiles in CODIS	1,450,157
Hits This Month	255
Total Data Bank Hits	11,476



Month	February 2010 (as of February 28, 2010)
Starting Backlog	46,716
New Samples Added	20,645
Profiles Uploaded into CODIS	21,835
Newly Removed from Backlog (Overall Total of <u>26.087</u> removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)	258
Ending Backlog	45,268
Total Forensic Unknown Profiles in CODIS	30,335
Total Data Bank (Offender) Profiles in CODIS	1,471,992
Hits This Month	256
Total Data Bank Hits	11,732



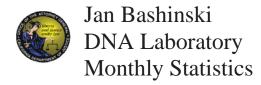
Jan Bashinski DNA Laboratory Monthly Statistics

Month	March 2010 (as of March 31, 2010)
Starting Backlog	45,268
New Samples Added	22,260
Profiles Uploaded into CODIS	23,025
Newly Removed from Backlog (Overall Total of <u>26.642</u> removed from backlog – including any samples Expunged. Removed or Falled twice, as well as where a New Sample has been requested)	555
Ending Backlog	43,948
Total Forensic Unknown Profiles in CODIS	30,888
Total Data Bank (Offender) Profiles in CODIS	1,495,017
Hits This Month	405
Total Data Bank Hits	12,137

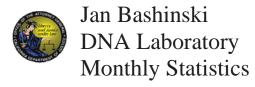


Month	April 2010 (as of April 30, 2010)
Starting Backlog	43,948
New Samples Added	21,045
Profiles Uploaded into CODIS	21,500
Newly Removed from Backlog (Overall Total of <u>26.677</u> removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)	35
Ending Backlog	43,458
Total Forensic Unknown Profiles in CODIS	31,307
Total Data Bank (Offender) Profiles in CODIS	1,516,517
Hits This Month	288
Total Data Bank Hits	12,425

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Month	May 2010 (as of May 31, 2010)
Starting Backlog	43,458
New Samples Added	20,305
Profiles Uploaded into CODIS	14,392
Newly Removed from Backlog (Overall Total of <u>27.209</u> removed from backlog—including any samples Expunged, Removed or Falledt wice, as well as where a New Sample has been requested)	532
Ending Backlog	48,839
Total Forensic Unknown Profiles in CODIS	31,898
Total Data Bank (Offender) Profiles in CODIS	1,530,909
Hits This Month	258
Total Data Bank Hits	12,683



Month	June 2010 (as of June 30, 2010)
Starting Backlog	48,838
New Samples Added	21,174
Profiles Uploaded into CODIS	22,056
Newly Removed from Backlog (Overall Total of <u>28.603</u> removed from backlog—including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)	1,393
Ending Backlog	46,563
Total Forensic Unknown Profiles in CODIS	32,434
Total Data Bank (Offender) Profiles in CODIS	1,552,965
Hits This Month	383
Total Data Bank Hits	13,066



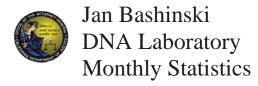
Jan Bashinski DNA Laboratory Monthly Statistics

Month	July 2010 (as of July 31, 2010)
Starting Backlog	46,563
New Samples Added	20,639
Profiles Uploaded into CODIS	21,222
Newly Removed from Backlog (Overall Total of <u>28.947</u> removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)	344
Ending Backlog	45,636
Total Forensic Unknown Profiles in CODIS	33,125
Total Data Bank (Offender) Profiles in CODIS	1,574,187
Hits This Month	316
Total Data Bank Hits	13,382

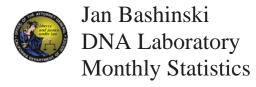


Month	August 2010 (as of August 31, 2010)
Starting Backlog	45,636
New Samples Added	21,589
Profiles Uploaded into CODIS	22,104
Newly Removed from Backlog (Overall Total of 29.645 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)	698
Ending Backlog	44,423
Total Forensic Unknown Profiles in CODIS	33,688
Total Data Bank (Offender) Profiles in CODIS	1,596,291
Hits This Month	408
Total Data Bank Hits	13,790

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Month	September 2010 (as of September 30, 2010)
Starting Backlog	44,423
New Samples Added	21,152
Profiles Uploaded into CODIS	21,232
Newly Removed from Backlog (Overall Total of 30.207 removed from backlog – including any samples Expunged, Removed or Falled twice, as well as where a New Sample has been requested)	562
Ending Backlog	43,781
Total Forensic Unknown Profiles in CODIS	34,487
Total Data Bank (Offender) Profiles in CODIS	1,617,523
Hits This Month	372
Total Data Bank Hits	14,162



Month	October 2010 (as of October 31, 2010)
Starting Backlog	43,781
New Samples Added	20,235
Profiles Uploaded into CODIS	23,633
Newly Removed from Backlog (Overall Total of 30.939 removed from backlog – including any samples Expunged, Removed or Falled twice, as well as where a New Sample has been requested)	732
Ending Backlog	39,651
Total Forensic Unknown Profiles in CODIS	35,083
Total Data Bank (Offender) Profiles in CODIS	1,641,156
Hits This Month	420
Total Data Bank Hits	14,582



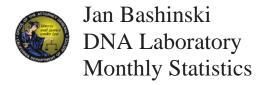
Jan Bashinski DNA Laboratory Monthly Statistics

Month	November 2010
Starting Backlog	39,651
New Samples Added	18,273
Profiles Uploaded into CODIS	18,869
Total Removed from Backlog (Overall total of samples removed from backlog - including any samples Expanged. Removed or Failed twice, as well as where a New Sample has been requisedly.	28,315
Ending Backlog	41,679
Total Forensic Unknown Profiles in CODIS	35,800
Total Data Bank (Offender) Profiles in CODIS	1,660,025
Hits This Month	343
Total Data Bank Hits	14,925

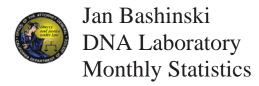


Month	December 2010
Starting Backlog	41,679
New Samples Added	18,461
Profiles Uploaded into CODIS	20,013
Newly Removed from Backlog (Overall Total of 29,125 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this moths harmber is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)	810
Ending Backlog	39,317
Total Forensic Unknown Profiles in CODIS	36,667
Total Data Bank (Offender) Profiles in CODIS	1,680,038
Hits This Month	625
Total Data Bank Hits	15,550

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Month	January 2011
Starting Backlog	39,317
New Samples Added	17,303
Profiles Uploaded into CODIS	17,999
Newly Removed from Backlog (Overall Total of 29.854 removed from backlog – including any samples. Expunged, Removed or Failed twice, as well as where a New Sample has been requested—offset this morths number in negarity because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)	729
Ending Backlog	37,892
Total Forensic Unknown Profiles in CODIS	37,568
Total Data Bank (Offender) Profiles in CODIS	1,698,037
Hits This Month	484
Total Data Bank Hits	16,034



Month	February 2011
Starting Backlog	37,892
New Samples Added	16,054
Profiles Uploaded into CODIS	18,234
Newly Removed from Backlog (Overall Total of 30,157 removed from backlog-including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Affect this months in number is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)	303
Ending Backlog	35,409
Total Forensic Unknown Profiles in CODIS	38,074
Total Data Bank (Offender) Profiles in CODIS	1,716,271
Hits This Month	405
Total Data Bank Hits	16,439



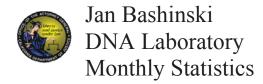
Jan Bashinski DNA Laboratory Monthly Statistics

Month	March 2011
Starting Backlog	35,409
New Samples Added	19,703
Profiles Uploaded into CODIS	19,145
Newly Removed from Backlog (Overall Total of 30,918 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this morths number in negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failness.)	761
Ending Backlog	35,206
Total Forensic Unknown Profiles in CODIS	38,809
Total Data Bank (Offender) Profiles in CODIS	1,735,416
Hits This Month	394
Total Data Bank Hits	16,833

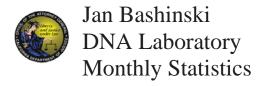


Month	April 2011
Starting Backlog	35,206
New Samples Added	17,122
Profiles Uploaded into CODIS	17,104
Newly Removed from Backlog (Overall Total of 32,002 removed from backlog—including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this months is magetive because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)	1,084
Ending Backlog	34,140
Total Forensic Unknown Profiles in CODIS	39,497
Total Data Bank (Offender) Profiles in CODIS	1,752,520
Hits This Month	395
Total Data Bank Hits	17,228

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Month	May 2011
Starting Backlog	34,140
New Samples Added	18,418
Profiles Uploaded into CODIS	19,401
Newly Removed from Backlog Overall Total of 29.828 removed from backlog—nduting any samples Expangle. Removed of 21th divise, as well as where SNew Samples been requested—Note: this months change is negative because successful results been requested—Note: this months change is negative because successful results were obtained on samples and uploads were made on samples previously removed from the backlog due to qualification status (now changed as a result of manual record reviews), indequates sample, or two or more analytical failures.)	-2,174
Ending Backlog	35,331
Total Forensic Unknown Profiles in CODIS	40,001
Total Data Bank (Offender) Profiles in CODIS	1,771,921
Hits This Month	374
Total Data Bank Hits	17,602



Month	June 2011
Starting Backlog	35,331
New Samples Added	18,312
Profiles Uploaded into CODIS	19,294
Newly Removed from Backlog (Overall Total of 30,919 removed from backlog—including any samples Expunged. Removed or Failed twice, as well as where a New Sample has been requisedly.	1,091
Ending Backlog	33,258
Total Forensic Unknown Profiles in CODIS	40,775
Total Data Bank (Offender) Profiles in CODIS	1,791,215
Hits This Month	501
Total Data Bank Hits	18,103



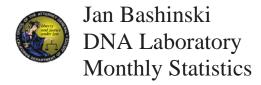
Jan Bashinski DNA Laboratory Monthly Statistics

Month	July 2011
Starting Backlog	33,258
New Samples Added	17,432
Profiles Uploaded into CODIS	17,966
Newly Removed from Backlog (Overall Total of 31,304 removed from backlog – inchaing any samples Expanged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this morths number in negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)	385
Ending Backlog	32,339
Total Forensic Unknown Profiles in CODIS	41,337
Total Data Bank (Offender) Profiles in CODIS	1,809,181
Hits This Month	349
Total Data Bank Hits	18,452

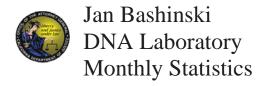


Month	August 2011
Starting Backlog	32,339
New Samples Added	17,047
Profiles Uploaded into CODIS	17,484
Newly Removed from Backlog (Overall Total of 32,351 removed from backlog—including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this months is magetive because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)	1,047
Ending Backlog	30,855
Total Forensic Unknown Profiles in CODIS	41,817
Total Data Bank (Offender) Profiles in CODIS	1,826,665
Hits This Month	348
Total Data Bank Hits	18,800

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Month	September 2011
Starting Backlog	30,855
New Samples Added	10,026
Profiles Uploaded into CODIS	15,737
Newly Removed from Backlog (Overall Total of 32,802 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this months namber is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)	451
Ending Backlog	24,693
Total Forensic Unknown Profiles in CODIS	42,251
Total Data Bank (Offender) Profiles in CODIS	1,842,402
Hits This Month	283
Total Data Bank Hits	19,083



Month	October 2011
Starting Backlog	24,693
New Samples Added	7,398
Profiles Uploaded into CODIS	8,943
Newly Removed from Backlog (Overall Total of 33,110 removed from backlog-including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—More this months in angetive because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)	308
Ending Backlog	22,840
Total Forensic Unknown Profiles in CODIS	42,715
Total Data Bank (Offender) Profiles in CODIS	1,851,345
Hits This Month	351
Total Data Bank Hits	19,434



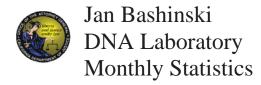
Jan Bashinski DNA Laboratory Monthly Statistics

Month	November 2011
Starting Backlog	22,840
New Samples Added	11,328
Profiles Uploaded into CODIS (*In total 11,536 were uploaded, but 1805 were results for samples previously listed as removed from the backlog.)	9,731*
Removed from Backlog (Overall Total of 31_305 removed from backlog, *1,805 less than last month due to obtaining successful results on specimen previously removed— This category includes sumples Expunged, Removed or Failed twice, as well as where a new Sample has been requested.	*
Ending Backlog	24,437
Total Forensic Unknown Profiles in CODIS	43,291
Total Data Bank (Offender) Profiles in CODIS	1,862,881
Hits This Month	428
Total Data Bank Hits	19,862

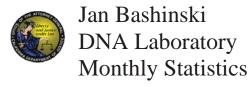


Month	December 2011
Starting Backlog	24,437
New Samples Added	11,683
Profiles Uploaded into CODIS	7,946
Newly Removed from Backlog (Overall Total of 31.967 removed from backlog - including any samples Expunged. Removed or Fuiled twice, as well as where a New Sample has been requisedly.	662
Ending Backlog	27,512
Total Forensic Unknown Profiles in CODIS	43,768
Total Data Bank (Offender) Profiles in CODIS	1,870,827
Hits This Month	215
Total Data Bank Hits	20,077

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Month	January 2012
Starting Backlog	27,512
New Samples Added	14,041
Profiles Uploaded into CODIS	8,031
Newly Removed from Backlog (Overall Total of 33,340 removed from backlog – including any samples. Expunged, Removed or Failed twice, as well as where a New Sample has been requested—roke: this morths inamber in negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)	1,373
Ending Backlog	32,149
Total Forensic Unknown Profiles in CODIS	44,366
Total Data Bank (Offender) Profiles in CODIS	1,878,858
Hits This Month	350
Total Data Bank Hits	20,427



Month	February 2012
Starting Backlog	32,149
New Samples Added	13,121
Profiles Uploaded into CODIS (*In total 13,116 were uploaded, but 151 were results for samples previously listed as removed from the backlog.)	12,965
Newly Removed from Backlog (Overall Total of 33,189 removed from backlog = 151 less than last month due to obtaining successful results on specime previously removed— This category includes samples Expunged, Removed or Failed twice, as well as where a new Sample has been requested)	*
Ending Backlog	32,305
Total Forensic Unknown Profiles in CODIS	44,845
Total Data Bank (Offender) Profiles in CODIS	1,891,974
Hits This Month	379
Total Data Bank Hits	20,796



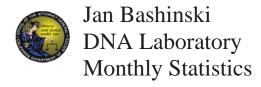
Jan Bashinski DNA Laboratory Monthly Statistics

Month	March 2012
Starting Backlog	32,305
New Samples Added	17,171
Profiles Uploaded into CODIS	9,931
Newly Removed from Backlog (Overall Total of 33,872 removed from backlog-including any samples Expunged. Removed or Failed twice, as well as where a New Sample has been requested)	683
Ending Backlog	38,862
Total Forensic Unknown Profiles in CODIS	45,516
Total Data Bank (Offender) Profiles in CODIS	1,901,905
Hits This Month	364
Total Data Bank Hits	21,160

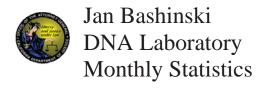


Month	April 2012
Starting Backlog	38,862
New Samples Added	15,272
Profiles Uploaded into CODIS	10,588
Newly Removed from Backlog (Overall Total of 34,275 removed from backlog—including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—More: this months is magetive because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)	403
Ending Backlog	43,143
Total Forensic Unknown Profiles in CODIS	46,222
Total Data Bank (Offender) Profiles in CODIS	1,912,493
Hits This Month	412
Total Data Bank Hits	21,572

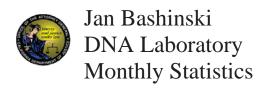
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Month	May 2012
Starting Backlog	43,143
New Samples Added	14,828
Profiles Uploaded into CODIS	13,101
Newly Removed from Backlog (Overall Total of 34.973 removed from backlog - including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested-70x6: this morths insuber is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)	698
Ending Backlog	44,172
Total Forensic Unknown Profiles in CODIS	46,863
Total Data Bank (Offender) Profiles in CODIS	1,925,594
Hits This Month	490
Total Data Bank Hits	22,062



Month	June 2012
Starting Backlog	44,172
New Samples Added	13,225
Profiles Uploaded into CODIS	13,231
Newly Removed from Backlog (Overall Total of 35.115 removed from backlog - including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this months number in negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)	142
Ending Backlog	44,024
Total Forensic Unknown Profiles in CODIS	47,540
Total Data Bank (Offender) Profiles in CODIS	1,938,825
Hits This Month	378
Total Data Bank Hits	22,440



Month	July 2012
Starting Backlog	44,024
New Samples Added	15,705
Profiles Uploaded into CODIS	15,559
Newly Removed from Backlog (Overall Total of 36,001 removed from backlog - including any samples Expunged, Removed or Failed twice, as well as where a New Sample hash been requested—Note: this morths number in negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)	886
Ending Backlog	43,284
Total Forensic Unknown Profiles in CODIS	48,132
Total Data Bank (Offender) Profiles in CODIS	1,954,384
Hits This Month	403
Total Data Bank Hits	22,843

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KAMALA D. HARRIS Attorney General



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Email: nathan.davalle@doj.ca.gov

April 18, 2012

SENT VIA EMAIL AND U.S. MAIL

Michael T. Risher, Staff Attorney American Civil Liberties Union Foundation of Northern California 39 Drumm Street San Francisco, CA 94111 mrisher@aclunc.org

Re: California Public Records Act Request

Dear Mr. Risher:

This letter is in response to your correspondence dated April 6, 2012, which was received by the Attorney General's Office on April 6, 2012, in which you sought various records pursuant to the Public Records Act as set forth in Government Code section 6250 et seq. Specifically, you requested:

Copies of the Jan Bashinski DNA Laboratory Monthly Statistics, for each month from January 2007 to the present. The current copy of this document is posted each month on your website at http://oag.ca.gov/sites/all/files/pdfs/bfs/Monthly.pdf?

If you have historical data stored electronically in a format that is easily accessible (e.g., in a spreadsheet or standard database format) I would also like a copy of that file.

The Department has conducted a search of its files and located reports titled "Jan Bashanski DNA Laboratory Monthly Statistics," for the following months:

Jan 2007	Jan 2008	Jan 2009	Jan 2010	Jan 2011	Jan 2012
Feb 2007	Feb 2008	Feb 2009	Feb 2010	Feb 2011	Feb 2012
March 2007	March 2008	March 2009	March 2010	March 2011	March 2012

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Michael T. Risher April 18, 2012 Page 2

April 2007	April 2008	April 2009	April 2010	April 2011
May 2007	May 2008	May 2009	May 2010	May 2011
June 2007	June 2008	June 2009	June 2010	June 2011
July 2007	July 2008	July 2009	July 2010	July 2011
August 2007	August 2008	August 2009	August 2010	August 2011
Sept. 2007	Sept. 2008	Sept. 2009	Sept. 2010	Sept. 2011
October 2007	October 2008	October 2009	October 2010	October 2011
Nov 2007	Nov 2008	Nov 2009	Nov 2010	Nov 2011
Dec 2007	Dec 2008	Dec 2009	Dec 2010	Dec 2011

Pursuant to Government Code section 6253, subdivision (b), our office charges \$.10/page as the direct cost for duplication of public records. However, you indicated in your request that you would prefer that the Department provide you electronic records if they are stored in a format that is easily accessible (e.g., in a spreadsheet or standard database format). Because these documents are already maintained electronically, we have provided a CD-ROM containing the responsive documents with this letter. As such, the Department waives the duplication and/or postage charge in this matter.

Sincerely,

NATHAN DAVALLE

Men Wille

Acting Special Agent in Charge Professional Standards Group Division of Law Enforcement

For

KAMALA D. HARRIS Attorney General Case: 10-15152 08/31/2012 ID: 8307669 DktEntry: 95-5 Page: 1 of 4 (26 of 29)

EXHIBIT 3

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Hits Inis Month	Total Data Bank Profiles in CODIS	Total Forensic Unknown Profiles in CODIS	Ending Backlog	Samples Removed from Backlog	Profiles Uploaded into CODIS	New Samples Added	Starting Backlog		Total Data Bank Hits	Hits This Month	Total Data Bank Profiles in CODIS	Total Forensic Unknown Profiles in CODIS	Ending Backlog	Samples Removed from Backlog	Profiles Uploaded into CODIS	New Samples Added	Starting Backlog	
408	1,596,291	33688	44,423	698 (29,645)	22104	21589	45,636	Aug-10	11476	255	1,450,157	29885	46,716	391 (25829)	21285	19839	48,553	Jan-10
3/2	1,617,523	34487	43,781	562 (30,207)	21232	21,152	44,423	Sep-10	11,732	256	1,471,992	30335	45,268	258(26087)	21835	20645	46,716	Feb-10
420	1,641,156	35083	39,651	732 (30,939)	23633	20,235	43,781	Oct-10	12,137	405	1,495,017	30888	43,948	555 (26,642)	23025	22,260	45,268	Mar-10
343	1,660,025	35800	41,679	28,315	18869	18,273	39,651	Nov-10	12,425	288	1,516,517	31307	43,458	35 (26,677)	21500	21045	43,948	Apr-10
C70	1,680,038	36667	39,317	810 (29,125)	20013	18461	41,679	Dec-10	12,683	258	1,530,909	31898	48,839	532 (27209)	14392	20,305	43,458	May-10
301		32,966		5)	20,931			2010 Average	13,066	383	1,552,965	32434	46,563	1393 (28603)	22056	21174	48,838	Jun-10
									13,382	316	1,574,187	33125	45,636	344(28947)	21222	20639	46,563	Jul-10

13,790

14,162

14,925

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Total Data Bank Hits	Hits This Month	Total Data Bank Profiles in CODIS	Total Forensic Unknown Profiles in CODIS	Ending Backlog	Samples Removed from Backlog	Profiles Uploaded into CODIS	New Samples Added	Starting Backlog			Total Data Bank Hits	Hits This Month	Total Data Bank Profiles in CODIS	Total Forensic Unknown Profiles in CODIS	Ending Backlog	Samples Removed from Backlog	Profiles Uploaded into CODIS	New Samples Added	Starting Backlog	
18,800	348	1,826,665	41,817	30,855	1047 (32,351)	17,484	17047	32,339	Aug-11		16034	484	1,698,037	37568	37,892	729 (29854)	17999	17303	39,317	Jan-11
19,083	283	1,842,402	42,251	24,693	451 (32,802)	15,737	10,026	30,855	Sep-11		16,439	405	1,716,271	38074	35,409	303 (30157)	18234	16054	37,892	Feb-11
19,434	351	1,851,345	42,715	22,840	308 (33,110)	8,943	7,398	24,693	Oct-11		16,833	394	1,735,416	38809	35,206	761 (30918)	19145	19,703	35,409	Mar-11
19,862	428	1,862,881	43,291	24,437	*(31305)	9,731	11,328	22,840	Nov-11		17,228	395	1,752,520	39497	34,140	1084 (32002)	17104	17122	35,206	Apr-11
20,077	215	1 1,870,827	43,768	27,512	662 (31967)	7,946	11683	24,437	Dec-11		17,602	374	1,771,921	40001	35,331	-2174(29828)	19401	18,418	34,140	May-11
	377		40,825			15,749			2011 Average		18,103	501	1,791,215	40775	33,258	1091 (30919)	19294	18312	35,331	Jun-11
											18,452	349	1,809,181	41337	32,339	385 (31304)	17966	17432	33,258	Jul-11

Jan-12 Feb-12 Mar-12 Apr-12 May-12 Jun-12 27,512 32,149 32,305 38,862 43,143 44,172 14041 13121 17171 15272 14,828 13,225 8031 12965 9931 10588 13101 13231 1373 683 403 698 13101 13231 133340) neg. 151 (33872) (34,275) (34,973) (35,115) 32,149 32,305 38,862 43,143 44,172 44,024 44366 44845 45516 46222 46863 47540 1,878,858 1,891,974 1,901,905 1,912,493 1,925,594 1,938,825 350 379 364 415 490 378 20427 20796 21,160 21572 22062 22440	May-12 43,143 14,828 13101 698 142 (34,973) (35, 44,172 1,925,594 1,9 22062
May-12 Jun-12 43,143 44,172 14,828 13,225 13101 13231 698 (34,973) 142 (35,115) 44,172 44,024 46863 47540 1,925,594 1,938,825 1,926,594 1,938,825 22062 22440	May-12 Jun-12 Jul-12 43,143 44,172 44,024 114,828 13,225 15,705 13101 13231 15559 698 (34,973) 142 (35,115) 886 (36,00 44,172 44,024 43,284 46863 47540 48132 1,925,594 1,938,825 1,954,384 490 378 403 22062 22440 22843
Jun-12 44,172 13,225 13231 142 (35,115) 44,024 47540 1,938,825 378	

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